

S.B. Civil Misc. Appeal No.438/1992

Sethia Metals and Alloys (P) Ltd.

vs.

Council of Scientific and Industrial Research and others.

Date : 14.9.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sajjan Singh, for the appellant.

Mr. DR Bhandari, for the respondents.

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Heard learned counsel for the parties.

The appellant is aggrieved against the order of the trial court dated 10.9.1992 by which the appellant's application under Order 33 CPC for permission to file suit as an indigent person was rejected.

According to learned counsel for the appellant, it is true that the appellant/applicant did not submit the schedule of the properties along with the application as required under Order 33 Rule 2 CPC but that was curable mistake. It is also submitted that it is clear from the facts mentioned in the application that the appellant clearly stated that all his assets have gone and industrial unit was taken possession by Rajasthan Financial Corporation (RFC). The appellant also stated in the application that he has no funds to pay the court fees and

also stated that there is heavy debt over the appellant's company. In view of the above, the objection of the Court that the appellant's non-disclosure of movable and immovable properties along with the schedule and not filing the schedule is not bonafide, is not correct. It is also submitted that the appellant clearly stated that he has no properties, therefore, even if that fact has to be supported by the schedule, then the appellant can now be permitted by this Court and he may be permitted to file the schedule of the properties.

Learned counsel for the appellant relied upon the judgment delivered by the Orissa High Court in the case of M/s. Powsulph (India) Pvt. Ltd. vs. M/s. Inventa Technical Services Pvt. Ltd. & Anr. reported in 1995(3) CCC 136 wherein the Orissa High Court after considering the provisions of Order 33 Rules 2 and 3 observed that if the application does not conform to Rules 2 and 3, opportunity should be given to rectify the defects. Orissa High Court also held that Order 33 Rule 5, as it relates to procedure, is only directory and not mandatory and the application outrightly cannot be rejected.

I considered the submissions of learned counsel for the appellant and perused the record as also, the application submitted by the appellant under Order 33 Rule 2 CPC and the statement of the appellant's representative.

It appears from the application filed under Order 33 Rule 2 CPC that the application contains no specific fact

about the appellant/applicant's any of the properties, may it be movable or immovable. There is no mention about any fact about the taking over of the assets of the appellant company by the financial corporation except mere saying that the appellant's assets have been under lien to the financial corporation. Not only this, the application is not verified which is a requirement under Order 33 Rule 2 CPC though there is no requirement of filing affidavit along with application but the application which has no particulars of the movable and immovable properties has not been amended or corrected despite the fact that the respondents/defendants specifically raised the objection that the plaintiff/appellant did not submit the verified application seeking permission to institute the suit as indigent person and further specific objection that no schedule of the properties has been attached by the plaintiff with the application. This objection was raised in the year 1981. The plaintiff was examined on 4.10.1990 after more than 9 years. The plaintiff's representative PW1 did not place on record any documentary evidence even after ten years and straightaway gave his statement that the plaintiff is not in position to pay the court fees.

In view of the above, in fact, the respondent could not even effectively meet with the allegation of the appellant about his having no means to pay the court fees of Rs.1,50,000/- or somewhat more.

So far as judgment of Orissa High Court, referred above, is concerned, it is clear that in that case, the applicant, though did not submit the schedule of the

properties along with the application but submitted copy of the balance sheet later on and that was taken on record in the said balance sheet, there was complete statement of assets and liabilities of the applicant on a particular date. Orissa High Court was of the view that the assets position and liabilities can be known from the balance-sheet and, therefore, a schedule of movable and immovable properties is nothing different from the figures mentioned against it and, therefore, Orissa High Court held that the defect is not fatal. Contrary to this, in this case, the application was filed before the trial court on 2.1.1980 and objection was raised by the respondent forthwith, no steps were taken by the applicant for correcting the mistake, if it was curable, for 10 years and he insisted for trial of such defective application and gave his evidence and even during the course of evidence, he did not disclose any particulars of the assets. In view of the above, there is a clear suppression of facts in the application on the basis of which one could have been exempted from paying the court fees.

Consequently, this appeal, having no merits, is hereby dismissed.

(PRAKASH TATIA), J.

S. Phophaliya